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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

In re B. M. et al., Persons Coming Under  
the Juvenile Court Law.

H043146  
(Santa Clara County Super. Ct.  
Nos. JD21624, JD21625)

SANTA CLARA COUNTY  
DEPARTMENT OF FAMILY AND  
CHILDREN'S SERVICES,

Plaintiff and Respondent,

v.

P. P.,

Defendant and Appellant.

In this dependency action, P.P. (Mother) appeals from the juvenile court's order terminating her parental rights and ordering a permanent plan of adoption, arguing that she established the beneficial relationship exception to adoption. Finding no error, we will affirm.

**I. BACKGROUND**

**A. INITIATION OF DEPENDENCY PROCEEDINGS**

Ten-year-old B.M. and his nine-year-old sister D.M. have been dependents of the juvenile court for five years. They were removed from Mother's home in Solano County in June 2011 based on sustained allegations that Mother failed to protect the children from physical abuse, and that she had subjected the children to acts of cruelty for several

months. Mother, who was living with a partner and that woman's adult son and other children, witnessed members of the partner's household physically discipline B.M. and D.M. without intervening. B.M. and D.M. had been tied up with rope by their wrists and torso, and struck with a belt repeatedly. B.M. suffered a gouge near his eye, welts rope burns on his wrist, and bruises on his waist, buttocks, and legs. D.M. suffered multiple bruises on her arms, and hair torn from her head. Mother was convicted of inflicting corporal injury upon a child under Penal Code section 273d stemming from that incident, and she was placed on probation for 36 months. The children were placed in foster care and later with their maternal grandfather while Mother received family reunification services.

The children's father (Father) was in prison when the children were removed from Mother's care, serving a four-year sentence for domestic violence against Mother. According to the police report, Father, who had assaulted Mother numerous times, choked Mother and threatened to shoot the children and kill himself if Mother ever left him. Father was released from prison in August 2011, and in March 2012 he was offered family reunification services. Mother spent some time in jail in 2011, and her housing was unstable during 2012. She was homeless, lived in transitional housing, and later lived with Father who subjected her to further domestic violence. In November 2012, Mother moved into her mother's home in San Jose, and the children were returned to her care with family maintenance services.

Jurisdiction was transferred to Santa Clara County in January 2013. In April 2013, the juvenile court issued a three-year restraining order at Mother's request protecting Mother and children from Father, and it ordered that Father's visits be supervised in a secure setting. The court appointed child advocates for both children. B.M., who was exhibiting emotional behavior at school, had told the social worker that he did not want to live with Mother, who had spanked and slapped him. D.M. was also exhibiting some emotional volatility at school. Father's family reunification services

were terminated in July 2013, after the social worker described Father as not accountable for his violence, obsessed with Mother, and lacking insight.

Mother's family maintenance was continued into 2014. At some point she and the children moved from her mother's home to a shelter, and in June 2014, after breaking off communication with her therapist, she requested that the restraining order against Father be modified to a peaceful contact order. The therapist was shocked to learn that Mother, who had recently insisted that the deputy sheriff's presence continue at Father's visitations, was interested in co-parenting with Father. The therapist reported: "I believe [Mother] knows she cannot meet the demands of her very needy children. [Mother] never mentioned nor discussed her developmental delays or her drug addiction/abuse and the need to develop strategies for parenting, to develop a treatment team to meet the mental health issues her children face or a plan for some sort of custody that kept her in the picture. [¶] When these problems were broached in a meaningful way, [Mother] shut down and directed the conversation elsewhere; usually toward blaming some other party for the problems. I do not think that [Mother] is capable of meeting her own needs much less those of her children. ... [Mother] is now trying to reconnect with [Father] ... . [Mother] is apparently willing to risk exposure to further violence if she keeps her children and has someone to 'control' them."

On July 9, 2014, the restraining order was modified to a peaceful contact order. That same day, Mother and Father attended a baseball game with the children, violating the supervised visitation order. The parents were intoxicated and Father yelled at D.M., calling her a "fucking bitch," telling her "I wish you were never born[,] and "if it wasn't for you," he and Mother would still be together. Mother told D.M. to listen to Father, and D.M. cried.

**B. THE SUPPLEMENTAL WELFARE AND INSTITUTIONS CODE SECTION 387 PETITION**

On July 23, 2014, the children were taken into protective custody for Mother's failure to protect them from Father's physical and emotional abuse, and the Santa Clara County Department of Family and Children's Services (Department) filed a supplemental petition under Welfare and Institutions Code section 387,<sup>1</sup> describing the July 9 ballgame incident and alleging that the children were not being adequately protected under Mother's care. The children were detained and placed in a foster home. Mother was given weekly supervised visitation, and Father was given supervised therapeutic visits twice monthly.

B.M.'s advocate recommended that B.M. not be returned to Mother or Father, after learning from B.M. that there had been overnight stays at a motel with Father, Mother and the children before the restraining order had been changed to peaceful contact, and that B.M. had been awakened one night by noises that he perceived as sex acts between his parents that upset him. The advocate also perceived B.M.'s visits with Mother as triggering behavioral problems that were absent when B.M. was in his care or the care of his foster mother. The advocate had been called upon by Mother to pick her up from a restaurant where she had spent the afternoon drinking with Father, and he found himself comforting D.M. when Mother was insisting that she Skype with Father.

The social worker recommended that family maintenance services be terminated and the children be placed in a permanent living arrangement. The social worker stated that both children had expressed to their therapist being upset by interactions with Father and Mother, and B.M. had confided to a therapist supervising a visitation that he "knew [they] were going to get taken," because Mother "was telling me things and doing stuff we weren't supposed to tell about," including staying at a motel with Father. B.M. also confided that Mother and Father would yell and drink beer. The social worker observed

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<sup>1</sup> Further statutory references are to the Welfare and Institutions Code.

that Mother “has been very consistent in stating that she, [B.M., and D.M.] are afraid of [Father],” yet Mother “continues to demonstrate a pattern of involving herself and her traumatized children in dependent, violent and abusive relationships.”

Mother submitted to the amended section 387 petition, sustained in September 2014, and weekly supervised visits continued. Father’s visits with children ceased in November 2014, about the same time the foster mother expressed an interest in adopting the children. In April 2015, the foster mother was granted de facto parent status. After a contested section 366.3 hearing later that month, the matter was set for a permanent placement hearing, and Mother’s supervised visits were reduced to twice monthly.

### **C. PERMANENCY HEARING UNDER SECTION 366.26**

#### **1. Mother’s Expert**

At the November 2015 permanent placement hearing, Mother presented the testimony of a psychologist, designated an expert in attachment theory and bonding theory, who had conducted a bonding study examining the relationship between Mother and the children. The expert had reviewed the social worker’s reports and the visitation logs, interviewed Mother, observed a two-hour visit between Mother and the children, and prepared a report recommending that Mother’s parental rights continue “[d]ue to the strong beneficial bond between the minors and [Mother].”

Mother’s expert testified that a parent-child bond starts in utero, and by ages four and one-half and five and one-half (when the children first separated from Mother) the bond had been established. Her observations of the children seeking Mother’s attention and caregiving during the visit showed the presence of a bond. Particularly, D.M. was very attention-seeking toward Mother during the visit, and Mother gave D.M. emotional comfort when she became upset about a game. D.M. became noticeably distraught when the visit ended, running to and hugging Mother three different times. She testified that terminating Mother’s parental rights can lead to the children having depression, anxiety, and behavioral issues.

On cross-examination, the expert testified that her limited assessment determined whether a bond existed, but not the nature and quality of the bond. She could not determine whether the attachment between Mother and children was healthy or unhealthy without assessing the children, which she had not done. She acknowledged that her assessment would have been better had she contacted the children's social worker and foster mother, neither of which happened. She acknowledged that children will form bonds with caretakers who are unable to provide nurturance or a child's basic needs, and children who have suffered abuse and neglect are at a higher risk of forming unhealthy bonds.

She testified that it was detrimental for a child to not have a sense of stability, and it was important for competing caregivers to support each other to avoid anxiety and stress to the children. She could not say what kind of impact the parent's domestic violence had on the children in this case, even though she had reviewed the case file. But she admitted that there was a higher risk for an impaired parent-child bond when domestic violence is present in the home and the victim of that violence fails to protect the children. She testified that the words "strong" and "beneficial" in her written recommendation to continue Mother's parental rights must have been a typo because she could not make the conclusion that the bond was strong or beneficial. She meant to recommend that Mother's parental rights continue "[d]ue to the *parental* bond between minors and [Mother]."

## **2. The Department's Expert**

A Department supervising social worker testified as an expert in permanency planning and risk assessment. She had supervised the case since February 2015 and had taken over as the primary social worker three months later. She had a particular interest in the case because of the abuse the children had endured while living in Solano County. She had hands-on knowledge about the family, having spoken with the parents, visited with the children, and supervised some of the visitation. She had met with the foster

mother several times, and had spoken with the children's therapist and their school principal. Both children wanted to be adopted.

B.M. and D.M. had been diagnosed with posttraumatic stress disorder. The children had been marked by domestic violence in the home at an early age, followed by torture when they were four and five years old. They had experienced stress due to uncertainty during the reunification period, and post-reunification hurtful things had happened to the children.

Trauma had stunted D.M.'s social and emotional development which could be seen in her tantrums. The social worker viewed D.M.'s hyper-vigilance in trying to please Mother as a reaction to trauma. But the social worker did not consider those behaviors as an impediment to adoption because they would subside with permanency in her life. She noted that B.M.'s behaviors had started to improve because "he's been able to have a voice now[.]" She summarized, "[I]f they were adopted and could have the security of a home where they knew they were being protected and loved and in safety without having to be retraumatized or exposed to more trauma, I think they would be able to move forward in their lives and do well." She was not in favor of a legal guardianship because that would allow for the possibility of the children returning to their parents, and that possibility would instill fear and insecurity and prevent the children from feeling safe and moving forward.

She testified that the bond between D.M. and Mother was based in fear. Both children had experienced trauma when Mother had been angry at them, so D.M. was overly affectionate to Mother physically (sometimes licking or suckling her) to forestall any anger. D.M.'s relationship with Mother had not helped her develop skills needed to deal with her trauma, and the relationship was not positive, supportive, or emotionally appropriate. For example, Mother did not share in D.M.'s excitement when D.M. took off her shoes to show Mother her painted toenails. D.M. thought they were sparkly and pretty, but Mother told her "you weren't supposed to do that" because they were dark

green and they had agreed on only light colors. Mother tensed up when she learned that D.M. had gotten a professional pedicure, causing D.M. and B.M. to tense up as well. Mother did not support D.M.'s desire to call her foster mother "mom," asking D.M., "are you giving up on us?"

B. M. did not care for his visits with Mother, and he was negatively impacted when Mother discouraged other relationships that were important to him, such as the critical relationship with his advocate, who had helped stabilize B.M. emotionally and socially. During a supervised visit, B.M. had shared with Mother that the advocate considered B.M. part of his family and had told B.M. that he could call him "uncle." But Mother told him that was not okay and B.M. started to cry. Mother was unable to read B.M.'s emotional cues or support him. The social worker had witnessed many unhealthy moments of silence during visits when Mother had tensed up and the children became worried and did not know how to react. In the social worker's assessment, the nature and quality of the relationship between Mother and each child assessed separately was not positive, nurturing, or beneficial.

### **3. Mother's Testimony**

Mother testified to her consistent and undisputed visitation record with the children and that she was "fighting this [] because my kids had asked me in the beginning not to give up, and [] what I'm doing is for them."

### **4. The Juvenile Court's Ruling**

The juvenile court terminated Mother's and Father's parental rights and freed the children for adoption, finding that Mother had failed to establish the beneficial parent-child bond exception to adoption. The court noted that it was not persuaded by Mother's expert, and it gave more credence to the Department's social worker expert. While acknowledging that the children loved and cared for their parents, the court observed that "in their very short lives, [the children] have suffered repeated physical and emotional abuse and suffered multiple complex traumatic events." The court found that the



children’s “need for stability and security in a permanent loving and safe home outweighed the benefits of continuing the parental relationship[.]”

Mother appeals from the juvenile court’s order. Neither the children nor Father have appealed, nor have they participated in Mother’s appeal.

## **II. DISCUSSION**

### **A. STANDARD OF REVIEW**

Under section 366.26, “[i]f the court determines, ... by a clear and convincing standard, that it is likely the child will be adopted, the court shall terminate parental rights and order the child placed for adoption.” (§ 366.26, subd. (c)(1).) An exception to termination exists when “[t]he court finds a compelling reason for determining that termination would be detrimental to the child due to ... the following circumstance[]: [¶] (i) The parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.” (§ 366.26, subd. (c)(1)(B)(i).) To meet the burden of proving the parental bond exception, “the parent must show more than frequent and loving contact, an emotional bond with the child, or pleasant visits—the parent must show that he or she occupies a parental role in the life of the child. [Citation].” (*In re I.W.* (2009) 180 Cal.App.4th 1517, 1527.)

We apply a form of the substantial evidence standard of review to Mother’s failure to prove the existence of a beneficial parental relationship, which is a factual component of the adoption exception. On that failure-of-proof challenge, Mother must show that “the evidence compels a finding in favor of [her] as a matter of law.” (*In re I.W.*, *supra*, 180 Cal.App.4th at p. 1528.) “Specifically, the question becomes whether [Mother’s] evidence was (1) ‘uncontradicted and unimpeached’ and (2) ‘of such a character and weight as to leave no room for a judicial determination that it was insufficient to support a finding.’ [Citation].” (*Ibid.*)

In determining whether the existence of a parental bond establishes a “compelling reason for determining that termination would be detrimental” (§ 366.26, subd. (c)(1)(b)),

the parent must show that “the parent-child relationship is sufficiently strong that the child would suffer detriment from its termination,” and that the parental relationship “ ‘ promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents.” ’ ” (*In re Aaliyah R.* (2006) 136 Cal.App.4th 437, 449.)

We review that determination for abuse of discretion. (*In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1314.)

## **B. BENEFICIAL RELATIONSHIP**

Mother argues that “substantial evidence established that B.M. and D.M. would benefit by continuing their relationship with Mother.” But to succeed on this failure-of-proof argument, Mother must show that the evidence compels the finding of a beneficial relationship as a matter of law. (*In re I.W.*, *supra*, 180 Cal.App.4th at p. 1528.) Mother points to the children having spent two-thirds of their lives with her, having continuing affection for her, and having positive visits with her. She also relies on her expert’s conclusion that “the children had a successful attachment and a parental bond” with her. But the juvenile court rejected that expert’s testimony, accepting instead the more convincing testimony of the supervising social worker, who had been extensively involved in the case. The social worker testified as an expert in permanency planning and risk assessment that the bond between Mother and the children was not healthy or positive, and that the bond between Mother and D.M. in particular was based in fear. Based on the supervising social worker’s expert testimony, supported by an extensive record, we cannot conclude as a matter of law that Mother’s evidence was uncontradicted and unimpeached, compelling a finding of a beneficial relationship.

Mother argues that the circumstances here are analogous to those in *In re Scott B.* (2010) 188 Cal.App.4th 452, where both mother and child challenged an order terminating mother’s parental rights based on the parent-child relationship exception to adoption. The *In re Scott B.* court concluded that the trial court had erred by ordering an

adoption instead of a legal guardianship, because of the inherent possibility that the adoption would disrupt the child's relationship with his mother. (*Id.* at p. 472.) In that case, mother had a limited ability to provide for the special needs of her autistic child, resulting in a detrimental home environment. (*Id.* at p. 455–456.) The child was in a foster home for two and one-half years, while mother maintained regular positive visits with the child. Although mother failed to correct some regressive behavior during early visits, she became better able to set boundaries for the child, and she stopped giving in to him. (*Id.* at p. 461.) The foster mother recognized that continued contact between the child and the biological mother was important (*id.* at p. 462), the child's advocate considered it imperative that the child maintain contact with mother, and the respondent recommended that the parental rights be terminated and an adoption by the foster mother proceed based on the child's statements (later retracted) that he wanted to be adopted and based on the foster mother's assurances (which could not be guaranteed) that visits with the mother would continue. (*Id.* at pp. 465–466.) The instant case is distinguishable because Mother's expert could not say that the bond between Mother and children was positive, the supervising social worker and B.M.'s advocate considered the children's relationship with Mother unhealthy, and the children supported the adoption.

### **C. DETRIMENT**

Mother argues that the juvenile court abused its discretion by finding that she failed to meet her burden of establishing “a compelling reason for determining that termination would be detrimental to the child[ren].” (§ 366.26, subd. (c)(1)(B).) She argues that the juvenile court abused its discretion by rejecting her expert's opinion, and the Department's social workers were unduly critical of her efforts to act as a parent. For example, her “surprise” reaction to D.M.'s nail polish, and her allowing D.M. to sit on her lap were “well within the typical range of parenting behavior.”

We find no abuse of discretion on this record. Mother was persistent in failing to protect her children from physical and emotional abuse. The record shows that Mother's

ongoing relationship with Father was harmful to the children, and that Mother herself continued to harm the children by undermining their efforts to achieve a stable life with secure and supportive relationships. She discouraged the positive relationship B.M. had built with his advocate, and she was unable to share in the children's smallest joys. The juvenile court was within its discretion to reject the opinion of Mother's expert, particularly after she acknowledged that her opinion did not extend to whether Mother's bond with the children was strong or beneficial. The juvenile court's rejection of a legal guardianship was also within its sound discretion, given that a guardianship " 'is not irrevocable and thus falls short of the secure and permanent placement intended by the Legislature.' " (*In re Beatrice M.* (1994) 29 Cal.App.4th 1411, 1419.)

### **III. DISPOSITION**

The order is affirmed.

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Grover, J.

**WE CONCUR:**

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Rushing, P.J.

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Premo, J.